

**DIRECT TESTIMONY OF**  
**JOHN BACOT**  
**ON BEHALF OF**  
**CHECKER YELLOW CAB CO., INC.**  
**DOCKET NO. 2014-372-T**

1   **Q.     Please state your name position and address.**

2   A.           My name is John Spratt Bacot Jr, I am an owner of Yellow  
3           Cab Company of Greenville and my address is 436 Warehouse Ct.  
4           Taylors, SC 29687.

5   **Q.     What is your background?**

6   A.           I graduated from West Point in 1986. After 5 years in the  
7           Army and a stint in the first Gulf War I got out and worked with  
8           my father-in-law's family business. In 1993 I came to work at  
9           Checker Yellow Cab Co. in Columbia, SC and continued there until  
10          2005 when I became an owner in Yellow Cab Co. in Greenville  
11          where I work today.

12   **Q.     What are your duties at Yellow Cab Co. of Greenville?**

13   A.           As owner, my duties cover the full spectrum of managing a  
14          transportation company. The recruiting, leasing to drivers,

1 handling passenger issues, marketing our services, vehicle  
2 maintenance, background checks, and legal issues among others.

3 **Q. Are those essential elements to managing a transportation**  
4 **company?**

5 A. Yes and there are others.

6 **Q. Would you consider yourself an expert in the management of a**  
7 **taxicab transportation company?**

8 A. After 21 years of doing it, Yes, I would consider myself  
9 knowledgeable enough to be considered an expert.

10  
11 **Offer as expert on matters pertaining to Class C operations and the**  
12 **management, ownership and operation of a taxicab business in SC**

13  
14 **Q. You have been asked to appear as a witness in Rasier's**  
15 **application for a Class C Transportation Network Company's**  
16 **application. Have you reviewed the application?**

17 A. Yes.

18 **Q. Do you see any issues that the Commission should be aware of?**

1 A. Yes, many.

2 **Q. What is your first issue?**

3 A. The first issue I see is that Rasier is applying for a designation  
4 that doesn't exist. I am familiar with the regulations concerning  
5 Class C Taxi and Class C Charter but have no idea what a Class C  
6 Transportation Network Company is.

7 **Q. What is Yellow Cab's certificate?**

8 A. Yellow Cab of Greenville holds a Class C Taxi.

9 **Q. What about this Transportation Network name they have**  
10 **created?**

11 A. If they want to create a new designation, my understanding  
12 is that there are rulemaking procedures that should be followed  
13 which give the Commission time and the public an opportunity to  
14 provide input as to what those rules might be. But I don't believe  
15 applying for a designation that doesn't exist and then trying to  
16 expedite it as they have done is the proper way to proceed.

17 **Q. What is the second issue you would like the Commission to be**  
18 **aware of?**

1 A. The second issue I have is that Uber should also be applying  
2 for a Class C Taxi not just this Rasier Company.

3 **Q. Are you familiar with Uber?**

4 A. Yes, very.

5 **Q. Are you familiar with Rasier?**

6 A. I have never heard of them until this application was filed.

7 **Q. Have you since familiarized yourself with Rasier?**

8 A. Yes.

9 **Q. Are you familiar with Uber's method of operations, how they**  
10 **conduct their business?**

11 A. Yes, enough to know that they are in the taxi business but  
12 have refused to apply for permits that everyone else in the taxi  
13 business is required to have.

14 **Q. Why should Uber be required to hold a Class C Taxi certificate?**

15 A. Uber claims to be solely a technology company. But in my  
16 opinion, Uber is a motor vehicle carrier under our laws and should  
17 not be allowed to operate behind the sham corporation Rasier.

1   **Q.   What have you learned about Rasier?**

2   A.           Apparently, Rasier is what I call a throw away corporation.

3   **Q.   What do you mean by throw away corporation?**

4   A.           It appears there are many Rasier's in the US. By throw away  
5               corporation I mean there is no legitimate business purpose of the  
6               entity except to shield the real operator, Uber, from liability. I  
7               think lawyers call it an alter ego.

8   **Q.   From your experience why would a transportation company like**  
9       **Uber want to transact business through an alter ego?**

10  A.           The transportation of passengers is a high liability business.  
11               Instead of facing it and insuring against it Uber continues to claim  
12               it is merely a technology company and has created what I call a  
13               shell game of many corporations.

14  **Q.   Are you familiar with the statutes that govern transportation**  
15       **companies in SC?**

16  A.           Yes. The   applicable statute for companies engaging in  
17               transportation services like ours at Yellow Cab of Greenville and  
18               Uber is SC Code 58-23-10 (4). I have included the text here.

19

1        **58-23-10 (4) The term "motor vehicle carrier" means every**  
2        **corporation or person, their lessees, trustees or receivers,**  
3        **owning, controlling operating or managing any motor propelled**  
4        **vehicle, not usually operated on or over rails, used in the**  
5        **business of transporting persons or property for compensation**  
6        **over any improved public highway in this State.**

7        **Q.    So SC law defines “motor vehicle carriers”?**

8        A.        Yes and it includes all corporations or persons doing the  
9        above activities, not just an entity created for throw away  
10       purposes. The key word is every. Uber, Rasier and any other entity  
11       which is involved in the activities the statute lists should be  
12       required to get a certificate appropriate to the type of operation  
13       they plan to engage in. It is not innovative to create a sham entity  
14       to get licensed in.

15       The statute protects the public from the very thing Uber is trying  
16       to do here and that is to create a sham corporation to shield it  
17       from the liabilities that are inevitable in the transportation  
18       business.

19       **Q.    Do you know if they engage in any of the activities the statute**  
20       **lists?**

1 A. If you go to their own website you will see that they recruit,  
2 train, and furnish the smartphone used by their drivers. The  
3 software on that smartphone is Ubers'. It is nothing more than a  
4 dispatch and payment management system for the drivers they  
5 put on the street. Uber restricts the use of the provided  
6 smartphone to dispatch and payment operations exclusively.

7 If you ride Uber there are no markings on the car but instead an  
8 easily removable U inside the car that the driver can remove at  
9 will. Every aspect of managing the transportation process is  
10 performed by Uber or controlled through an alter ego like Rasier.

11 Uber clearly controls and manages motor propelled vehicles. Do  
12 you know of any technology company that performs background  
13 checks on its users? Why would they need to do that if they were  
14 merely a technology company connecting willing passengers to  
15 willing drivers?

16 Uber does not allow any of the hundreds of properly licensed and  
17 permitted vehicles to operate on its system. It only allows drivers  
18 that it or its alter ego have hired to operate on it then takes a  
19 commission split of the fares. Does that sound like a technology  
20 company to you or someone engaged in the transportation  
21 business?

1 **Q. Based on what you know about their operations what**  
2 **designation should they hold?**

3 A. If Rasier or Uber is involved in the taxi business, which they  
4 are in my opinion, they need to apply for a Class C Taxi Certificate.

5 **Q. Do you have any additional issues you would like to bring to the**  
6 **Commission's attention?**

7 A. Several.

8 **Q. What are they?**

9 A. I want the Commission to be aware of what Uber has put in  
10 their terms and conditions that riders must agree to before riding.

11 **Q. Such as?**

12 A. In order to use Uber or Rasier services, the passenger must  
13 agree to Uber's lengthy terms and conditions which are displayed  
14 on a very small smartphone screen and are unconscionably  
15 stacked in favor of Uber and against the passenger. I'm not aware  
16 of motor vehicle carriers having the legal authority to require  
17 passengers to sign or agree to terms and conditions before riding.

18 They also require passengers to abide by future amendments as  
19 Uber arbitrarily decides and by continuing to use the platform



1 Uber states that the passenger automatically agrees to these  
2 terms.

3 **Q. Are you aware of any other motor vehicle carriers that require**  
4 **passengers to agree to terms and conditions that suit the**  
5 **company before being able to ride?**

6 A. No.

7 **Q. What particular terms would you like the Commission to be**  
8 **made aware of?**

9 A. Even after controlling all aspects from recruiting, hiring,  
10 rating, firing, inspection, pricing, commission split, customer  
11 support, and providing insurance, Uber states that it “DOES NOT  
12 PROVIDE TRANSPORTATION SERVICES AND THE COMPANY IS NOT  
13 A TRANSPORTATION CARRIER”. Further, Uber claims it “HAS NO  
14 RESPONSIBILITY OR LIABILITY FOR ANY TRANSPORTATION  
15 SERVICES PROVIDED”.

16 The company wants to provide rides through its drivers and split  
17 the fares with them on a commission basis but doesn’t want the  
18 responsibility that goes with it.

19 **Q. Any others?**

1 A. Yes, the company admits under the heading Payment Terms  
2 that it sets the pricing and that all fees are non-refundable.  
3 However, passengers are not paying a fee to use the app they are  
4 paying a fare for the ride provided by Uber's drivers. Uber sets  
5 those rates, publishes them and again then turns around and  
6 claims it's not a transportation provider.

7 Uber classifies its drivers as third parties. But they are not third  
8 parties at all. Every driver has a contract with Uber in which Uber  
9 controls every aspect of the passenger transportation  
10 relationship.

11 The company disclaims all liability for personal injury and tries to  
12 claim that it is only an internet company and any interactions  
13 between passengers and drivers are not its responsibility.

14 I would like to hand up a marked version of the terms and  
15 conditions for the Commission to review.

16 **Q. Any other major concerns?**

17 A. There are many in the terms and conditions which I have  
18 highlighted but I would like to bring special attention to the  
19 Limitation of Liability.

1 Uber specifically states "THAT BY USING THE APPLICATION AND  
2 THE SERVICE, YOU MAY BE EXPOSED TO TRANSPORTATION THAT  
3 IS POTENTIALLY DANGEROUS, OFFENSIVE, HARMFUL TO MINORS,  
4 UNSAFE OR OTHERWISE OBJECTIONABLE, AND THAT YOU USE  
5 THE APPLICATION AND THE SERVICE AT YOUR OWN RISK."

6 **Q. Why is this a concern?**

7 A. The reason that the regulation of motor vehicle carriers is  
8 vested in the Public Service Commission is to protect the public  
9 from self-serving arrangements like this which benefit Uber at the  
10 public's expense.

11 Additionally, if carriers can limit their liability this way then all  
12 carriers should be allowed to enter into these arrangements.  
13 Because there is no doubt they benefit the carriers albeit at the  
14 public's expense.

15 **Q. Do you have any further issues you would like to raise with the**  
16 **Commission?**

17 A. Yes, I would like the Commission to be aware of the timeline  
18 of events which will further add to my previous testimony  
19 regarding Uber using Rasier as its alter ego.

1 **Q. What timeline are you referring to?**

2 A. If you review the affidavits filed by George Parker and Travis  
3 Crane you will see that Uber representatives began recruiting  
4 drivers in Columbia on 6/17/2014.

5 O.R.S. promptly filed its petition seeking to show Uber was a  
6 regulated carrier on 6/24/2014.

7 Uber started providing service in South Carolina on 7/10/2014.

8 Checker Yellow Cab Co. Inc. filed its petition to intervene on  
9 7/19/2014.

10 The hearing was set for 8/26/2014. Uber hired Ben Mustian's law  
11 firm and a notice of appearance was filed with the Commission on  
12 8/22/2014.

13 According to Rasier's own filing, Rasier wasn't even incorporated  
14 in SC until 8/29/2014, after which Rasier, not Uber, files its  
15 application with the Commission.

16 **Q. And your point is?**

17 A. My point is that Uber is and still is the transportation  
18 company and it wasn't until O.R.S. filed a petition against it and  
19 after Uber hired Ben Mustian did it decide to create this Rasier

1 Company and seek approval in Rasier's name. Uber had been  
2 operating in Greenville, Charleston, Columbia, and Myrtle Beach  
3 illegally for more than 6 weeks before Rasier was even  
4 incorporated. Now they claim Uber is just a technology company.  
5 And worse, the insurance documents filed by Rasier show no  
6 coverage before the effective date of 8/28/2014 which, by the  
7 way, was the day before it incorporated. Who was providing  
8 coverage to Uber for the 6 weeks it operated before incorporating  
9 Rasier?

10 **Q. Beyond the Terms and conditions you wanted to bring to the**  
11 **Commissions attention what other issues would you like to**  
12 **make them aware?**

13 A. I would like to go back to Rasier's application. I have serious  
14 concerns regarding the waivers they requested. Keeping in mind  
15 that these are regulations that every other Class C Taxi operator  
16 complies with but Rasier and Uber have decided should not apply  
17 to their operations.

18 **Q. Which waiver requests should the Commission be concerned with?**

19 A. Rasier has listed 7 waivers it's requesting as well as a few  
20 listed on page 13 under the "Other Items" caption of its

1 application. I would like to go down those numerically with some  
2 important considerations I want the Commission to be aware of.

3 **Q. Ok, go ahead.**

4 A. As to waiver number 2, I would point out that 10 S.C. Code  
5 Ann. Reg.-103-133(7)(B)(10) requires a display stating, among  
6 other information, the name of the holder of authority under a  
7 Certificate of PC&N under which the driver is operating. The Uber  
8 platform does not display this information as Rasier but in fact  
9 displays it as Uber. You can see this in Rasier's Exhibit WMG-2  
10 p.13 This goes back to what I stated earlier that it is Uber not  
11 Rasier who is actually the "motor vehicle carrier".

12 As to waiver number 4, I believe it would be a grave mistake to  
13 allow Rasier to escape the requirement that it report its vehicles  
14 to O.R.S. There is no competitive reason for requesting this waiver  
15 whatsoever.

16 **Q. In your opinion how would the public interest suffer if the**  
17 **Commission were to grant this waiver?**

18 A. In my opinion, all of this secrecy they requested would be very  
19 detrimental to the public for two reasons. One is that the O.R.S. is

1 denied the ability to do spot inspections. Rasier wants to first get  
2 notice then inform their drivers that an inspection is imminent.

3 Secondly, It makes it much easier for Rasier to deny insurance  
4 claims to third parties as the public would have no way of  
5 checking the status of a vehicle involved in an accident. The public  
6 would have to have reason to believe the car in question was  
7 acting as a commercial vehicle, then contact O.R.S. O.R.S. would  
8 then have to go to Rasier and Uber hat in hand and hope they are  
9 being truthful in their response. There is clearly a conflict in this  
10 approach and a strong incentive for Uber and Rasier to  
11 manipulate the records to reflect the vehicle was not on their  
12 platform.

13 Uber has already done this in a particularly egregious case in San  
14 Francisco. An Uber driver killed a 6 year old girl and ran over other  
15 members of her family in a crosswalk in San Francisco. Uber  
16 denied the driver was on their "platform" as they call it. Later,  
17 Uber had to acknowledge the driver was logged in but only after  
18 attorney Christopher Dolan began pressuring the company to tell  
19 the truth. He is handling the case and could provide more details.  
20 I would urge the Commission to request more details on this and  
21 other insurance dodges the company has engaged in before

1 granting any type of certificate. This is the most serious in my  
2 opinion. It appears there is a concerted effort to keep as much  
3 information about the status of these vehicles hidden from the  
4 regulators and public and I can't think of any other reason than to  
5 avoid liability claims.

6 **Q. How would they deny or fail to acknowledge insurance claims?**

7 A. The vehicles used by Uber have no markings other than a  
8 removable U in the car. While the passenger may get a picture of  
9 the driver and his information, the public at large does not. If an  
10 Uber vehicle is registered in the name of a private citizen and  
11 there are no markings, it would be easy for an Uber driver to be  
12 involved in an accident going to or from a commercial call to  
13 deceive the injured motorist as well as his own insurance  
14 company by claiming he was on a personal trip when in fact it was  
15 a commercial transportation trip. Uber could easily delete the trip  
16 from its system and no one would know. The driver doesn't want  
17 to lose his job with Uber so there is a strong motivation to hide his  
18 affiliation with Uber and these requests to keep all of this  
19 information secret aid in perpetrating that fraud.

20 **Q. How would you propose to prevent such an injustice?**



1 A. I would implore the Commission to require Uber and Rasier  
2 to maintain a list of vehicles on file with the O.R.S and not be  
3 trusted to maintain these in secrecy as they have requested. I  
4 would also ask the Commission to require the vehicles display  
5 Rasier and Uber on the registration as opposed to just the driver.  
6 This way, any third party involved in an accident with one of Uber  
7 or Rasier's drivers would be able to see on the FR-10 that the  
8 insurance provided by Uber or Rasier may be available to satisfy  
9 any claims.

10 I would also ask the Commission to consider requiring that each  
11 driver "partner" as they are called, at least 30 days prior to  
12 commencing operations, be required to provide proof that their  
13 personal insurance carrier was notified that the vehicle would be  
14 used as a commercial transportation for hire vehicle. A proof of  
15 service by certified mail to the appropriate carrier would be one  
16 idea. There are probably others.

17 **Q. What about Rasier's claim that information is competitively**  
18 **sensitive?**

19 A. If a competitor wants to get a list of the vehicles and drivers  
20 It's very easy to simply download the app and start summoning

1 vehicles and ride until you get a pretty good idea who's out there.

2 I think that claim is disingenuous.

3 **Q. What other concerns do you have about Rasier's waiver**  
4 **requests?**

5 A. Number 5 requests a waiver from initial inspections. These  
6 inspections are vital to ensure the public is riding in vehicles that  
7 have at least met a minimum standard of safety. The inspections  
8 are not onerous. As far as I know, there is no reason why the  
9 vehicles should not be subject to same inspections as all other  
10 passenger for hire vehicles.

11 **Q. How about request #6?**

12 A. I am aware of the PSC granting waivers in Class C Charter  
13 operations but not Class C Taxi. UberX is a taxi service. There  
14 should at the very least be a placard on the interior of the vehicle  
15 and magnetized signs on the exterior identifying the vehicle for  
16 what it is; a taxi. I believe a simple removable U which again refers  
17 to Uber not Rasier is woefully inadequate. If Rasier is the licensed  
18 carrier then Rasier should be prominently displayed in the taxi  
19 with all information required by the applicable reg.

20 **Q. Anything further?**

1 A. Just one more. Rasier is requesting that all information be  
2 kept at its office which as I understand is in San Francisco. It  
3 doesn't want to make the filings all other Class C taxi operators  
4 make. Then it wants to retain the right to decide what's  
5 reasonable and not reasonable in responding to complaints. It  
6 states it will provide records it deems necessary to resolve specific  
7 complaints. This entire approach in my opinion contravenes the  
8 purpose of having regulation and supervision of the industry. It  
9 appears Rasier's approach to the regulatory scheme governing  
10 taxis is simply "trust us".

11 **Q. Anything else?**

12 A. Possibly. I understand there is a motion to compel pending  
13 on a number of requests. If those requests are answered fully and  
14 truthfully then no I have nothing further. If they are not I would like to  
15 supplement as previously granted.

16 **Q. So In Summary what are you asking the Commission to**  
17 **consider?**

18 A. 1. I would ask the commission to deny the application. In  
19 my opinion, Rasier has not shown it is fit or willing to follow the

1 regulations and approving Rasier in its current form is not in the  
2 public's interest.

3 2. In the event the Commission is considering approval, I  
4 would ask at the very least the Commission consider the  
5 following. That Rasier is really Uber. Rasier was created as a  
6 "throw away" corporation simply to shield Uber from liability  
7 after the O.R.S. brought a petition against Uber. Rasier alone is  
8 not the correct party that should be applying.

9 3. If Uber wants to change the regulations it should  
10 pursue that through a petition for rule change and not an  
11 expedited Class C application request as done here.

12 4. Passenger carriers should not be able to dupe the  
13 riding public into agreeing to unfair terms and conditions as a  
14 prerequisite to using the service as Uber and Rasier have done.

15 5. The waivers requested by Uber are disingenuous and  
16 are requested with an ulterior motive in mind. The motive is to  
17 make it difficult for the public to know whether or not the  
18 vehicles on the road are actually passenger for hire vehicles  
19 associated with Companies that have a financial incentive to  
20 conceal their identity.

1           6.     I would implore the Commission to require Uber and  
2     Rasier to maintain a list of vehicles on file with the O.R.S and not  
3     be trusted to maintain these in secrecy as they have requested. I  
4     would also ask the Commission to require the vehicles display  
5     Rasier and Uber on the registration as opposed to just the driver.

6           7.     I would also ask the Commission to consider requiring  
7     that each driver, at least 30 days prior to commencing operations,  
8     be required to provide proof that their personal insurance carrier  
9     was notified that the vehicle would be used as a commercial  
10    transportation for hire vehicle.

11    Thank you.